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No. 83-209

In The

Supreme Court of the United States

October Term, 1983

LOCAL DIVISION 732, AMALGAMATED TRANSIT UNION,

Petitioner,

vs.

METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

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QUESTIONS PRESENTED

1. Did the Superior Court of Fulton County, Georgia and the Supreme Court of Georgia properly construe this Court's decision in *Jackson Transit Authority v. Local Division 1285, Amalgamated Transit Union, AFL-CIO-CLC*, 457 U.S. 15 (1982), in applying Georgia law to determine the enforceability of an arbitration provision in a "13(c) agreement" between a local government transit agency and a union representing some of its employees?

2. Did the Superior Court of Fulton County and the Georgia Supreme Court properly decline to apply the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*, in determining the enforceability of an arbitration to formulate the terms and conditions of an entirely new collective bargaining agreement for certain employees of a local government transit agency?

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The Respondent, Metropolitan Atlanta Rapid Transit Authority, respectfully prays that the petition for a writ of certiorari to review the judgment of the Supreme Court of Georgia entered in this case on May 11, 1983, be denied.

OPINIONS BELOW

The opinion of the Superior Court of Fulton County, Georgia is unreported and appears at the Appendix to the

Petition ("Pet. App.") at A1; the order of the Georgia Court of Appeals is unreported and appears at Pet. App. B1; the opinion of the Supreme Court of Georgia is reported at 251 Ga. 15, 303 S. E. 2d 1 (1983), and is printed in Pet. App. at C1.

JURISDICTION

This Court's jurisdiction is based on 28 U. S. C. § 1257 (3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Metropolitan Atlanta Rapid Transit Authority Act of 1965, Ga. Laws 1965, pp. 2243, *et seq.*, as amended. The pertinent portion of this statute is printed at Pet. App. F1.

STATEMENT OF THE CASE

I. Facts

On June 27, 1981, the Metropolitan Atlanta Rapid Transit Authority ("MARTA") and Local Division 732, Amalgamated Transit Union, AFL-CIO ("Union") were parties to two agreements. One, a "labor agreement", or collective bargaining agreement, set forth the terms and conditions of employment for those MARTA employees represented by the Union. The other, a "13(c) agreement", had been approved by the Secretary of Labor as an adequate protective arrangement for Union employees under Section 13(c) of the Urban Mass Transportation Act of 1964 ("UMTA Act"), 49 U. S. C. § 1609(c).

On June 27, 1981, the labor agreement expired and MARTA and the Union, pursuant to an arbitration clause

in the 13(c) agreement, entered into interest arbitration, a process in which two partisan arbitrators and one neutral arbitrator determine the terms and conditions of a new labor agreement between MARTA and the Union, including the wages and other employment conditions of Union employees.

A dispute and subsequent litigation arose over what wages should be paid to Union employees during the arbitration to form a new labor agreement. On January 29, 1982, the U. S. Court of Appeals for the Eleventh Circuit held, for the first time among the several Courts of Appeals which had previously considered the issue,[1] that the interpretation of the 13(c) agreement was to be governed by Georgia, not federal law. *Local Division 732, Amalgamated Transit Union v. Metropolitan Atlantic Rapid Transit Authority*, 667 F. 2d 1327, 1345, *reh'g denied*, 671 F. 2d 1382 (11th Cir. 1982), *stay denied* 50 U.S.L.W. 3801 (April 5, 1982). That decision was subsequently confirmed by this Court in *Jackson Transit Authority v. Local Division 1285, Amalgamated Transit Union*, 457 U. S. 15 (1982).

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[1] *Div. 587, Amal. Transit Union v. Municipality of Metropolitan Seattle*, 663 F. 2d 875 (9th Cir. 1981); *Local Div. 1285, Amal. Transit Union v. Jackson Transit Authority*, 650 F. 2d 1379 (6th Cir. 1981); *Local Div. 714, Amal. Trans. Union v. Greater Portland Transit Dist.*, 589 F. 2d 1 (1st Cir. 1978); *Local Div. 519, Amal. Transit Union v. LaCrosse Municipal Transit Utility*, 585 F. 2d 1340 (7th Cir. 1978); *Div. 1287, Amal. Transit Union v. Kansas City Area Transportation Auth.*, 582 F. 2d 444 (8th Cir. 1978), *cert. denied*, 439 U. S. 1090 (1979).

Because the interest arbitration was still in progress at the time of the Eleventh Circuit decision, MARTA management consulted its counsel and exercised its right under Georgia law to revoke its consent to and withdraw from the interest arbitration proceeding.

II. Proceedings Below

MARTA filed this action in the Superior Court of Fulton County, Georgia, seeking a declaration that MARTA had properly exercised its right under Georgia law to withdraw from the arbitration. The Superior Court restrained further arbitration proceedings until a decision on the merits. The Union attempted to remove the case to federal court, but following the Eleventh Circuit's issuance of the mandate in *Local Division 732, Amalgamated Transit Union v. Metropolitan Atlanta Rapid Transit Authority, supra,* the District Court granted MARTA's motion to remand this case back to state court (R. 192). The Union appealed the remand order, but dismissed its appeal following this Court's decision in *Jackson Transit Authority v. Local Division 1285, Amalgamated Transit Union, supra.*

While this case was pending in the trial court, the Georgia General Assembly enacted a statute which for the first time provided for interest arbitration of MARTA-Union contracts. The statute also established procedures concerning the selection of arbitrators and the standards for decision in future interest arbitrations that might occur between MARTA and the Union. Ga. Laws 1982, pp. 5101, *et seq.*[1]

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[1]The neutral arbitrator in the arbitration at issue here, a non-resident of Georgia, would be ineligible to serve as an interest arbitrator in a future arbitration. Ga. Laws 1982, p. 5104.

After a hearing on the merits, the trial court concluded that under *Jackson, supra,* Georgia law governed the construction of the arbitration clause of the 13(c) agreement, and that Georgia law permitted any party to withdraw from a common law arbitration at any time prior to award (Pet. App. A-16, 17). The trial court also found that the arbitration proceeding did not involve a dispute arising out of the 13(c) agreement, but "was for the purpose of creating a new and different agreement to govern future terms and conditions of employment." (Pet. A-9). Hence, the trial court properly rejected the Union's claim (R. 308) that the Federal Arbitration Act applied to the arbitration.

The Georgia Court of Appeals transferred the Union's appeal to the Georgia Supreme Court for jurisdictional reasons (Pet. App. B) and on May 11, 1983, the Georgia Supreme Court, applying Georgia law, affirmed the decision of the trial court. 251 Ga. 15, 303 S. E. 2d 1 (1983) (Pet. App. C).

REASONS FOR DENYING THE WRIT

I.

The Trial Court and the Georgia Supreme Court properly applied this Court's decision in Jackson.

In *Jackson, supra,* this Court decided not only that unions may not bring actions under 13(c) agreements in the federal courts, but also that the construction and enforcement of 13(c) agreements are to be governed by state law. As Justice Blackmun's opinion concluded:

> Given this explicit legislative history, we cannot read 13(c) to create federal causes of action for breaches of 13(c) agreements and collective bargaining agreements between UMTA aid recipients and transit unions. The legislative history indicates that Congress intended those contracts to be governed by state law applied in state courts.
>
> *Jackson, supra,* 457 U. S. at 29.

The Superior Court of Fulton County and the Supreme Court of Georgia were correct in applying Georgia law to determine the enforceability and effect of the arbitration clause in the 13(c) agreement between MARTA and the Union.

Further, contrary to the Union's statements in its petition (at 8-11), this case has nothing to do with the enforcement of promises made to the federal government in connection with federal financial assistance. This Court in *Jackson* explicitly distinguished between a transit agency-union 13(c) agreement and any promises that a transit agency might make to the federal government in connection with the grant of federal funds:

> There are other possible remedies for violations of § 13(c) agreements and collective bargaining contracts. The union, of course, can pursue a contract action in state court. In addition, the Federal Government can respond by threatening to withhold additional financial assistance. [citations omitted]
>
> While we hold that the union cannot sue in federal court to enforce its contracts, we express no view on the entirely separate question whether the Federal Government could bring a federal suit against a UMTA funding recipient for violating the terms of its grant agreement with the Government. Such a suit would involve a different contract from the § 13(c)

agreement and the collective bargaining agreement at issue in this case. [cites omitted]

Jackson, supra, 457 U. S. at 29, fn. 13.

The Union has instituted a separate action against the Secretary of Labor, claiming that MARTA should be declared ineligible for future federal transit assistance because § 13(c) has been violated, and that the Secretary of Labor's determination that MARTA is still eligible for federal assistance should be set aside.[3] In both that suit and here, the Union claims it has a "federal right" under § 13(c) to compulsory interest arbitration. In the only post-*Jackson* federal opinion construing § 13(c), however, the federal district court for the District of Columbia has found that § 13(c) does not require compulsory interest arbitration as a condition for federal transit funding. *Amalgamated Transit Union v. Donovan,* 554 F. Supp. 589 (D. D. C. 1982).[4] The Georgia courts quite properly ap-

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[3] *Amalgamated Transit Union, et al. v. Raymond J. Donovan,* Civil Action No. 82-2042, U. S. Dist. Ct., D. C., pending decision on cross-motions for summary judgment. This suit claims that the 1982 Georgia legislation, see p. 4 supra, makes it impossible for MARTA to comply with § 13(c). The suit challenges the Secretary of Labor's continued certification that MARTA is complying with § 13(c).

[4] The district court denied the Union's request for a preliminary injunction to cut off federal funds for three transit agencies after the Secretary of Labor had issued conditional § 13(c) certifications without requiring compulsory interest arbitration, stating as follows:

> During Congressional hearings, union officials urged adoption of language which would '[insure] the existence of authority for any employer and the bargaining representative of the employees to enter into enforceable arbitration agreements' and would require these protective arrangements, which included the above provision, 'not be limited

(Continued on next page)

plied Georgia law to the construction and enforcement of the MARTA 13(c) agreement and left resolution of claims concerning MARTA's eligibility for federal transit funds to the Secretary of Labor, subject to review by the federal courts.

II.

The Trial Court and the Georgia Supreme Court properly declined to apply the Federal Arbitration Act to this case.

This case does not involve the refusal of the Georgia courts to apply the Federal Arbitration Act in those cases where it should apply. If the Act requires arbitration, the Georgia courts will enforce arbitration. *West Point-Pepperell, Inc. v. Multi-line Industries, Inc.*, 231 Ga. 329, 201 S. E. 2d 452 (1973); *Merrill, Lynch, Pierce, Fenner & Smith, Inc. v. Wilbanks*, 162 Ga. App. 154, 290 S. E. 2d 122 (1982); *Paine, Webber, Jackson & Curtis, Inc. v. McNeal*, 143 Ga. App. 579, 239 S. E. 2d 401 (1977). But both this Court and the Georgia Supreme Court recognize that the Federal Arbitration Act does not require enforcement

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to employers of existing mass transportation systems, but shall also include employees employed on any new project, system, line, operation or facilities . . .' [citations omitted]. That these two provisions were rejected by Congress and do not now appear in Section 13 of UMTA demonstrates to the Court in the context of this preliminary injunction motion the Congress did not want to require a mandatory or enforceable form of impasse resolution [citations omitted] and did not want to require that the terms of collective bargaining agreements when transit companies first became public would have to continue in perpetuity.

554 F. Supp at 597-98.

of agreements to arbitrate which fall outside the requirements of the Act itself.[5] *Bernhardt v. Polygraphic Co. of America*, 350 U. S. 198 (1956); *Rockdale County v. City of Conyers*, 231 Ga. 477, 202 S. E. 2d 436 (1973).

In fact, two of the prerequisites to the application of the Federal Arbitration Act are missing from this case. First, the written agreement to arbitrate must call for arbitration of a dispute arising out of the making, performance or breach of the same contract in which the arbitration agreement is found. *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U. S. 395 (1967). As the trial court found, the arbitration at issue was to make a totally new contract, not to resolve a dispute about the contract containing the arbitration clause itself.[6]

The federal cases cited by the Union in which interest arbitration was required do not rest on the Federal Arbitration Act.[7] Instead, they rest on the federal common law of labor relations enunciated by the federal courts under the authority of *Textile Workers Union of America*

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[5]Section 2 of the Federal Arbitration Act provides:

§ 2. Validity, irrevocability, and enforcement of agreements to arbitrate

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract. July 30, 1947, 392, 61 Stat. 670. 9 U. S. C. § 2.

[6]See p. 5, *supra*.

[7]See fn. 8, p. 8 of Union's Petition.

v. Lincoln Mills of Alabama, 353 U. S. 448 (1957) and pursuant to § 301(a) of the Labor Management Relations Act.[8]

In two companion cases to *Lincoln Mills*, this Court upheld enforcement of labor arbitrations, but its decisions were explicitly based on Section 301 of the Labor Management Relations Act, and not, as one of the Courts of Appeals had held, on § 2 of the Federal Arbitration Act. *General Electric Co. v. Local 205, United Electrical, Radio & Machine Workers of America*, 353 U. S. 547 (1957); *Goodall-Sanford, Inc. v. United Textile Workers of America*, 353 U. S. 550 (1957).

During the pre-*Lincoln Mills* period when the First Circuit had held that labor arbitration was enforceable under the Federal Arbitration Act, rather than under § 301, Judge Charles Wyzanski refused to apply the Federal Arbitration Act to enforce a written agreement to submit to arbitration the formation of a new contract to govern employment conditions following expiration of a collective bargaining agreement. *Boston Printing Pressmen's Union v. Potter Press*, 141 F. Supp. 553 (D. Mass. 1956), *aff'd*, 241 F. 2d 787 (1st Cir. 1957), *cert. denied*, 355 U. S. 817 (1957). Judge Wyzanski refused en-

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[8] Arbitration is the centerpiece of the federal common law of labor relations, *United Steelworkers of America v. American Manufacturing Co.*, 363 U. S. 564 (1960); *United Steelworkers of America v. Warrior & Gulf Nav. Co.*, 363 U. S. 574 (1960); *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U. S. 593 (1960).

forcement because the Federal Arbitration Act requires arbitration only of disputes over the contract containing the arbitration clause, not arbitration of a totally new agreement.[9]

Interest arbitration—the formation of a future labor agreement by arbitration—is enforceable only under the federal private sector labor law of *Lincoln Mills*, the National Labor Relations Act, and the Labor Management Relations Act.[10] But this is the body of private sector labor law which this Court said that the Congress did not intend to apply to local transit agencies when it enacted § 13(c). *Jackson, supra*, 457 U. S. at 23-24.[11] Since *Lincoln Mills* and *Potter Press*, no court has relied on the Federal Arbitration Act to require formation by arbitration of the substance of an entirely new contract.

The second prerequisite to the application of the Federal Arbitration Act which is missing from this case is that the arbitration clause itself must be contained in "a

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[9]As Judge Wyzanski stated, " . . . the present United States Arbitration Statute does not seek to [enforce legislative awards of arbitrators], but is concerned only with the enforcement of quasi-judicial awards directed at the ascertainment of facts in a past controversy and at the prescription of recoverable damages or other suitable awards for that which has been broken not for that which is to be built." 141 F. Supp. at 557-558.

[10]29 U. S. C. § 152(2); 29 U. S. C. § 185(a).

[11]". . . labor relations between local governments and their employers are the subject of a longstanding statutory exemption from the National Labor Relations Act. 29 U. S. C. § 152 (2). Section 13(c) evinces no congressional intent to upset the decision in the National Labor Relations Act to permit state law to govern the relationships between local governmental entities and the unions representing their employees."

457 U. S. at 23-24.

contract evidencing a transaction involving commerce. . . ." 9 U.S.C. § 2. But the 13(c) agreement concerns no more than various provisions involving the rights, privileges, benefits and other employment conditions of the local transit employees of a local governmental transit agency (R. 26). The agreement nowhere calls for or evidences any transaction involving commerce. It is nothing more than an agreement specifying certain conditions of local employment, similar to a local employment agreement which this Court held was governed not by the Federal Arbitration Act, but by Vermont law, which permitted the revocation of consent to arbitrate at any time prior to award. *Bernhardt v. Polygraphic Co. of America, supra.*

The Federal Arbitration Act does not apply to this case and the Georgia courts properly declined to apply it.

III.

This case does not implicate major federal questions or policies.

In *Jackson,* this Court held that relations between local transit agencies and transit labor unions, including the construction of agreements between them, are to be governed by state law and state policy applied by state courts. Further review of the Georgia Supreme Court's decision in this case would undermine the effect and in-

tent of this Court's unanimous decision in *Jackson*. Any further federal questions surrounding § 13(c) are being developed, and should be developed, in the Union's ongoing litigation challenging the Secretary of Labor's construction and application of § 13(c).[12]

Construction of the many contracts between transit agencies and transit unions will involve application of myriad doctrines of state law, which differ from state to state.[13] As *Jackson* intended, these local matters should be left to the courts of the fifty states.

This Court held in *Jackson* that § 13(c) does not create federal rights for local transit unions, and hence these differing state doctrines should constitute proper state law grounds for sustaining state court decisions involving § 13(c) agreements. Unless this Court overrules its unanimous decision in *Jackson* and finds that § 13(c) in fact created a right to enforceable interest arbitration,[14]

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[12]See page 7 and footnotes 3 and 4, *supra*.

[13]For example, in the trial court and in the Georgia Supreme Court, both MARTA and the Union devoted considerable attention to contentions that interest arbitration involves a delegation, contrary to sound public policy, of the duty of public officials to participate directly in establishing wages and terms of employment for public employees. Courts in other states have applied a variety of doctrines to uphold and strike down interest arbitration contracts and statutes. *See, e. g., San Francisco Fire Fighters Local 798 v. City and County of San Francisco*, 137 Cal. Rptr. 607, 68 Cal. App. 3d 896 (1st Dist. 1977), *petition for hearing denied* 95 LRRM 3069 (Cal. Sup. Ct. 1977); *City of Spokane v. Spokane Police Guild*, 87 Wash. 2d 457, 553 P. 2d 1316 (1976); *Dearborn Fire Fighters Union Local No. 412 v. City of Dearborn*, 394 Mich. 229, 231 N. W. 2d 226 (1975); *Salt Lake City v. Int'l. Ass'n. of Firefighters, Locals 1645, et al.*, 563 P. 2d 786 (1977); *Greeley Police Union v. City Council of Greeley*, 191 Colo. 419, 553 P. 2d 790 (1976).

[14]A right which has been found not to exist, see p. 7, *supra*.

the Georgia Supreme Court's construction of MARTA's 13(c) agreement should be left undisturbed.

CONCLUSION

This case was properly decided in the court below and is not an appropriate case for the granting of certiorari by this Court. For these reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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